

OPINION
51-123

June 26, 1951 (OPINION)

OFFICERS

RE: Offices of Judge of County Court and Justice
 of the Peace not Incompatible

In your letter of June 14 you state that you have a situation in Divide County where it is necessary to have the judge of the county court and the clerk of the district court a combined office appointed by your county commissioners as justice of peace. You state that this necessity arises from lack of suitable persons to so act as a justice of peace.

It is our opinion that there is no conflict. The test in such cases is whether or not there is a conflict of duties. The general rule is that one person cannot hold two or more offices where the duties of such offices overlap or conflict. Obviously there is not conflict between the duties of a clerk of the district court and the duties of the probate judge in regard to a justice of the peace hearing matters, civil and criminal. Occasion may arise where civil matters affecting matters in probate may be tried before the justice, but they are nevertheless infrequent and the justice should refer such matters to the other justice of the peace within the jurisdiction.

ELMO T. CHRISTIANSON

Attorney General